

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
5:16-cv-10639-JCO-MKM

DAR'SHA L. HARDY, Plaintiff, v. IRON STREET PROPERTIES, LLC, d/b/a RIVER PARK LOFTS, BOYDELL DEVELOPMENT, INC and DENNIS KEFALLINOS, Defendants.	PLAINTIFF'S MOTION TO COMPEL APPEARANCE AND TESTIMONY OF DENNIS KEFALLINOS and LIZ TELEGADAS
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For the reasons set forth in the accompanying brief in support of her motion to compel, Plaintiff Dar'sha L. Hardy requests that this Honorable Court enter an order compelling both **DENNIS KEFALLINOS and LIZ TELEGADAS** to appear for their previously noticed deposition on or before January 31, 2017, awarding Plaintiff her attorney's fees and costs associated with Plaintiff's motion, and granting Plaintiff such other and further relief as is just and proper.

CERTIFICATION OF COUNSEL

Pursuant to Fed. R. Civ. Pro. 37(d)(1)(B) and ED LR 7.1(a)(1) and 2(A), I certify that I have attempted to obtain the requested relief, as fully set forth in the accompanying brief in support, without Court action in good faith by conferring or

attempting to confer with Defendants' attorney regarding the basis for this motion, and Plaintiff's requested relief, but did not obtain concurrence in the relief sought.

Dated: January 6, 2017	Respectfully submitted, STEPHEN A THOMAS, PLC By: s/Stephen A. Thomas Stephen A. Thomas, Esq. Attorney I.D. P43260 645 Griswold Street, Suite 1360 Detroit, Michigan 48226 Telephone: (313) 965-2265 sthomas@313965bank.com
sat/	Attorney for Plaintiff

Proof of Service

I, Stephen A. Thomas, hereby state that on January 6, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the attorneys of record.

Dated: January 6, 2017	STEPHEN A THOMAS, PLC By: s/Stephen A. Thomas Stephen A. Thomas, Esq. Attorney I.D. P43260 645 Griswold Street, Suite 1360
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	Detroit, Michigan 48226 Telephone: (313) 965-2265 sthomas@313965bank.com
sat/	Attorney for Plaintiff

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DAR'SHA L. HARDY, Plaintiff, v. IRON STREET PROPERTIES, LLC, d/b/a RIVER PARK LOFTS, BOYDELL DEVELOPMENT, INC and DENNIS KEFALLINOS, Defendants.	PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION TO COMPEL APPEARANCE AND TESTIMONY OF DENNIS KEFALLINOS and LIZ TELEGADAS
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INDEX OF AUTHORITIES

Court Rules

Fed. R. Civ. Pro. 26(c)

Fed R. Civ. Pro. Rule 30

Fed R. Civ. Pro. Rule 32(d)(1)

Fed. R. Civ. Pro. 37(d)(2)

ISSUES PRESENTED

Issue 1:

Whether **DENNIS KEFALLINOS and LIZ TELEGADAS** are required to appear for their depositions and provide testimony in this matter.

Plaintiff answers yes.

Issue 2:

Whether Plaintiff be awarded her attorney's fees and costs incurred to secure **DENNIS KEFALLINOS and LIZ TELEGADAS'** appearance and testimony by way of this motion.

Plaintiff answers yes.

BACKGROUND

On November 7, 2016 the Honorable John Corbett O'Meara entered STIPULATED ORDER Extending Deadlines (Discovery due by 1/31/2017). See Doc. 27.

On November 16, 2016, Plaintiff served Notice of Deposition, pursuant to Rule 30, scheduling the deposition of both **DENNIS KEFALLINOS and LIZ TELEGADAS** for January 5, 2017. Copies of the notice of deposition(s) are attached as Exhibit 1. Plaintiff's counsel served notice of deposition(s) by U.S. Mail and also on ben@goneklaw.com by electronic mail. See Exhibits 1 and 2.

On January 5, 2017, **DENNIS KEFALLINOS and LIZ TELEGADAS** both failed to appear for their duly scheduled depositions. A copy of the transcript and invoice are attached as Exhibit 3 and 4. Counsel for Plaintiff contacted Defense counsel Ben M. Gonek's office and spoke to Lisa Bezzo who indicated Mr. Gonek was at a case facilitation and was unaware of the scheduled deposition. Ms. Bezzo was advised of Plaintiff's intention to file her Motion to Compel and requested Mr. Gonek's concurrence pursuant to ED LR 7.1(a)(1) to said motion. To date, Mr. Gonek has not contacted Plaintiff's counsel.

LAW AND ARGUMENT

Under the Federal Rules of Civil Procedure, a party may take the deposition of any witness, party or otherwise, at any time after the parties have conducted the

discovery conference. Fed R. Civ. Pro. Rule 30. Under this rule, a party desiring to take the deposition of another party has to give proper notice and is entitled to take such testimony barring the filing of a timely motion by the deponent for entry of a protective order pursuant to Fed. R. Civ. Pro. 26(c). Fed. R. Civ. Pro. 37(d)(2). Further, pursuant to Rule 32, “an objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.” Fed R. Civ. Pro. Rule 32(d)(1).

In this case, **DENNIS KEFALLINOS and LIZ TELEGADAS** both have refused to appear for their previously noticed deposition despite receipt of the deposition notice.

Defendants have not taken steps to file a protective order with the Court as contemplated by Fed. R. Civ. Pro. 26(c) or contemplated by Fed. R. Civ. Pro. 37(d)(2).

Simply put, **DENNIS KEFALLINOS and LIZ TELEGADAS’** failure to appear for their depositions cannot be excused. While undersigned counsel is both mindful and respectful of the fact that conflicts do require adjournment and re-noticing of previously scheduled depositions, especially around the holidays. The fact is Mr. Gonek never contacted Plaintiff’s counsel to identify a new date or enter into a stipulated order adjourning **DENNIS KEFALLINOS and LIZ TELEGADAS’** depositions until a mutually agreeable date and time in near

future, falls short of what is required of Mr. Gonek under the court rules and the Court's Scheduling Order.

CONCLUSION

For all of these reasons, Plaintiff requests that the Court enter an order (a) compelling **DENNIS KEFALLINOS and LIZ TELEGADAS** to appear for their depositions on or before January 31, 2017 (Discovery cut-off is 1/31/2017), (b) awarding Plaintiff its attorney's fees and costs associated with her motion, and (c) granting Plaintiff such other and further relief as is just and proper.

Dated: January 6, 2017	Respectfully submitted, STEPHEN A THOMAS, PLC By: s/Stephen A. Thomas Stephen A. Thomas, Esq. Attorney I.D. P43260 645 Griswold Street, Suite 1360 Detroit, Michigan 48226 Telephone: (313) 965-2265 sthomas@313965bank.com
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